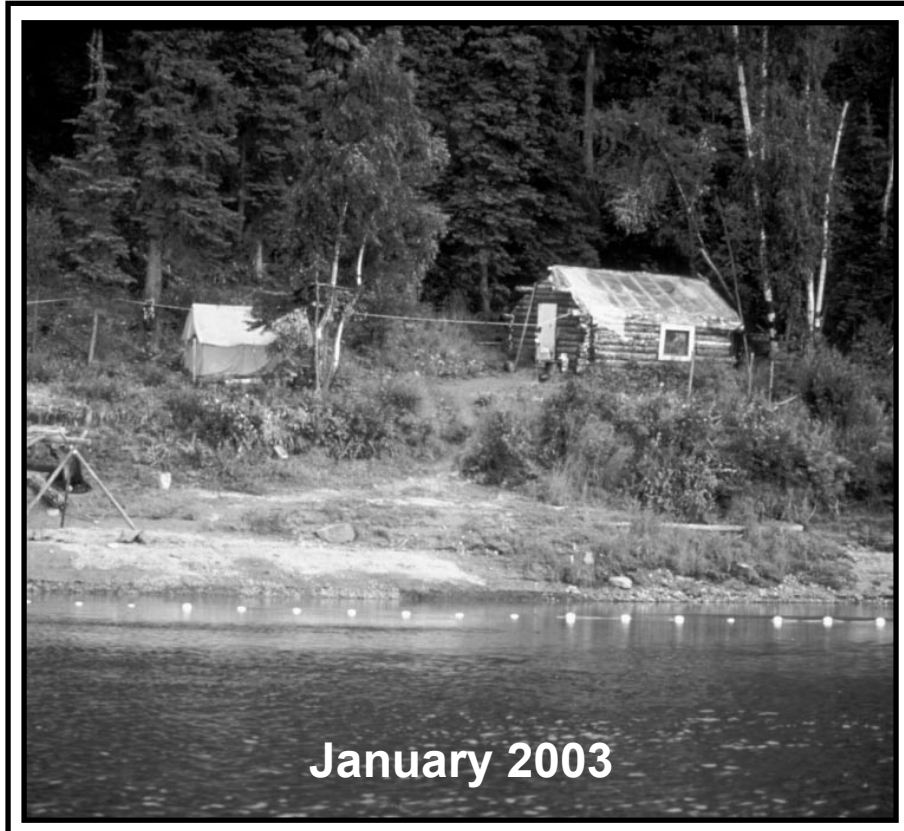


CUSTOMARY TRADE

Appendix



CONTENTS

Summary of Extended Comment Period,

<i>August 2002-November 01, 2002</i>	15
Regional Council Comments	15
Written Public Comments	20
Alaska Department of Fish and Game Comments	22
List of Authors of Written Public Comments.....	23

Summary of Comments Prior to May 2002

<i>Federal Subsistence Board Meeting</i>	25
Regional Council Comments	25
Written Public Comments	30
Alaska Department of Fish and Game Comments	35
List of Authors of Written Public Comments.....	36

Summary of Extended Comment Period August 2002 – November 01, 2002

REGIONAL COUNCIL RECOMMENDATIONS

At their Fall 2002 meetings, each Council reviewed their previous recommendations. Any changes made to their previous recommendations are shown as ~~stricken~~ or **added**.

Region 1 – Southeast Alaska Subsistence Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part are permitted.

(12) Transactions Between a Rural Resident and Others - The exchange for cash between rural residents and individuals other than rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident is permitted. Subsistence harvested fish ~~may~~ **shall** not enter commerce at any point.

For Southeast Fishery Management Area - The customary trade of eulachon to others is permitted as long as all sales are to individuals and the fish do not enter commerce at any point.

(13) excised in its entirety

Region 2 – Southcentral Alaska Subsistence Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part is permitted.

(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts or their eggs, legally taken under the regulations in this part from a rural resident to individuals other than rural residents is permitted, as long as it is used for personal or family consumption of the individual who purchases the fish. The recordkeeping form will be included on the back of the subsistence harvest permit.

§ __.27(i)(10) Cook Inlet Area

(xx) The total cash value per household member of salmon taken in the Cook Inlet Area exchanged in customary trade or barter to others may not exceed \$1,000.00 **\$500.00** annually. At least ~~50%~~ **70%** of all fish taken under subsistence regulations must be kept for the family's personal use.

§ __.27(i)(11) Prince William Sound Area

(xx) The total cash value per household member of salmon taken in the Prince William Sound Area exchanged in customary trade or barter to others may not exceed \$1,000.00 **\$500.00** annually. At least ~~50%~~ **70%** of all fish taken under subsistence regulations must be kept

CUSTOMARY TRADE

for the family's personal use.

(13) No Purchase By Fisheries Businesses – If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter or, subsistence taken fish, their parts, or their eggs.

Region 3 -- Kodiak/Aleutians Subsistence Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted.

(xx) The total cash value per household member of salmon taken in the Kodiak or Aleutians Area exchanged in customary trade or barter between rural residents may not exceed \$500.00 annually.

(12) Transactions Between a Rural Resident and Others - Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise.

(xx) The total cash value per household member of salmon taken in the Kodiak or Aleutians Area exchanged in customary trade or barter to others may not exceed \$500.00 annually. At least 50% of all fish taken under subsistence regulations must be kept for the family's personal use.

(13) No Purchase By Fisheries Businesses – If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter or, subsistence taken fish, their parts, or their eggs.

Region 4 -- Bristol Bay Subsistence Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part is permitted.

(xx) The total cash value per household of salmon taken in the Bristol Bay Area exchanged in customary trade or barter to rural residents may not exceed \$500.00 annually.

(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise.

(xxi) The total cash value per household of salmon taken in the Bristol Bay Area exchanged in customary trade or barter to others may not exceed \$400.00 annually.

(13) No Purchase By Fisheries Businesses – If you are required to be licensed as a

fisheries business under Alaska Statute AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter or, subsistence taken fish, their parts, or their eggs.

[NOTE: Without a tracking system (permits), the Bristol Bay Subsistence Regional Advisory Council does not support their actions on (11) and (12).] -----

Region 5 -- Yukon/Kuskokwim Delta Subsistence Regional Advisory Council

(11) Transactions Between Rural Residents – The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not exceed historical documented amounts. The Board may recognize regional differences and define customary trade differently for separate regions of the state.

(12) Transactions Between a Rural Resident and Others – Individuals, businesses or organizations may not purchase subsistence taken fish, their parts or their eggs for use in or resale to a significant commercial enterprise.

(13) No Purchase By Fisheries Businesses – Individuals, businesses or organizations may not receive through barter subsistence taken fish, their parts or their eggs for use in or resale to a significant commercial enterprise.

Region 6 -- Western Interior Regional Advisory Council

~~(11) Transactions Between Rural Residents – The exchange between rural residents in customary trade of subsistence-harvested fish, their parts (except eggs), or their eggs, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted. (The egg exception does not apply to whole fish.)~~

~~For the Yukon and Kuskokwim Areas Only:~~

~~(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts (except eggs), or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise. It is used for personal or family consumption of the individual who purchases the fish and cannot be resold.~~

~~At least 50% of all fish taken under Federal subsistence regulations must be used for personal and family consumption. If in-season subsistence restrictions have been imposed on a salmon species or escapement goal thresholds have not been met on the majority of the Yukon and Kuskokwim River drainages, sale to others shall be eliminated for that species.~~

~~If a rural resident engages in customary trade of subsistence harvested fish they shall maintain a subsistence harvest record to track the harvest level as a record keeping system. Anyone selling subsistence harvested salmon must have their harvest record in their possession when engaged in sales with others.~~

CUSTOMARY TRADE

~~If a person sells more than a total of 100 pounds of processed salmon, it would constitute a significant commercial enterprise, which should be looked at more closely.~~

~~Adopt Section 13 as written.~~

The Western Interior Council supports Alternative 1 – Take No Action.

Region 7 -- Seward Peninsula Regional Advisory Council

~~(11) Recommend adopting as proposed.~~

~~(12)~~

~~(xx) The total cash value per household member of salmon taken in the Norton-Sound-Port Clarence Area exchanged in customary trade or barter to others is not limited.~~

~~(13) Recommend adopting as proposed.~~

The Seward Peninsula Council supports Alternative 1 – Take No Action.

Region 8 -- Northwest Arctic Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part is permitted.

(12) Transactions Between a Rural Resident and Others - Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise.

~~(xx) The total cash value per household member of salmon taken in the Kotzebue Area exchanged in customary trade or barter to others is not limited.~~ ***In the Kotzebue Area, cash sales of subsistence caught salmon between rural residents and others shall not exceed \$1,000 per year per person.***

(13) No Purchase By Fisheries Businesses – If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter or, subsistence taken fish, their parts, or their eggs.

Region 9 - Eastern Interior Regional Advisory Council

(11) Transactions Between Rural Residents – The exchange between rural residents in customary trade of subsistence-harvested fish, their parts, except eggs, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted. (The egg exception does not apply to whole fish.)

(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts, except eggs, legally taken under the regulations in this part from a rural resident to

individuals other than rural residents is permitted, as long as it is used for personal or family **human** consumption of the individual who purchases the fish.

~~(13) No Purchase By Fisheries~~

~~Businesses – If you are required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter for, subsistence-taken fish, their parts, or their eggs. Any person with an Alaskan State business license who runs commercial dog teams is not allowed to buy and feed subsistence-caught fish to dogs. Also applies to non-Alaska businesses.~~

~~Definitions: Commercial Dog Team: A business that leases, rents, races, or otherwise provides services with their dogs or dog team for money or remuneration (services other than money), excluding amateur events.~~

Region 10 - North Slope Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part is permitted.

(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted.

(13) No Purchase By Fisheries Businesses – If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter or, subsistence taken fish, their parts, or their eggs.

SUMMARY OF WRITTEN PUBLIC COMMENTS

As a result of the extended comment period we received 38 additional written comments from Federal and State agencies, tribal organizations, commercial fisheries organizations, and interested individuals. Three comments stated a distinct preference for Alternative 2 and two for Alternative 1. The rest of the comments either stated that they oppose all customary trade of subsistence caught fish or made comments and recommendations related to the proposed rule and the alternatives.

At least ten of the comments we received were a direct response to the article published in the Anchorage Daily News on October 18, 2002. Of these ten, nine were opposed to all cash sales of subsistence caught fish and one supported Alternative 2.

Expressed Concerns

- *User conflicts:* Allowing customary trade will create aggressive competition between rural subsistence fishermen and between customary trade and licensed commercial fishermen.
 - Better-equipped modern subsistence fishermen will have an advantage over those who use traditional methods.
 - The commercial fishing industry will lose market share and customers.
 - Subsistence fishermen do not pay fish tax nor is a license required.
 - Permitting unlimited sales between rural residents would allow the rural buyer to put unlimited quantities into the commercial marketplace.
 - Subsistence processing methods pose a health threat and could demolish established commercial fisheries markets.
- *Conservation:* Allowing customary trade will lead to over harvest and decimation of entire stocks of fish.
- *Rural Economy:* Restricting customary trade will further weaken the already fragile economy in rural areas.
 - Household limits do not take into account that in rural Alaska multiple generations live in one house and that such restrictions would make it more difficult to support one's family.
 - Subsistence fishing requires cash for equipment and gas, etc. Stores and gas stations do not accept barter as a method of payment and in many rural communities customary trade is the only source of cash for most residents.
- *Public Health:* Subsistence fish entering the public market poses a threat to public health.
- *Enforcement:* Without documentation the regulation is completely unenforceable.
 - Enforcement officers and fisheries managers will be stretched beyond their limited manpower, making regulation of customary trade ineffective.
- *Research:* Without studies to support documentation of customary trade and how new regulatory language might affect current and traditional activities, it is premature to create new regulation.

General Recommendations

- Adopt the proposed rule as published.
- Do not restrict customary trade transactions.
- Prohibit all cash transactions.
- Ban sales between rural residents and non-rural residents.
- Some cash exchange should be allowed but not enough that it will appeal to potential entrepreneurs.
- Wherever cash transactions are allowed, record keeping must be required.
 - Provide a free Federal Permit and add a sales section to existing federal permits.
 - If a specified percentage of an individual's harvest may be sold, then records must be kept for the entire harvest.
 - Records must be maintained throughout the year.
 - Records must be available for inspection to authorized law enforcement officers.
- Require permits for anyone participating in customary trade.
- All fish that will be sold under customary trade regulations must be marked immediately upon harvest.
- Be clear that this regulation applies to individuals, groups, associations, co-ops, villages and regions.
- Balance the traditional practices with a regulation that does not allow the commercialization and expansion of subsistence resource uses.

Recommended Changes to the Proposed Rule

(11) Transactions Between Rural Residents

1. Allow limited cash sales.
 - a. Limit cash transactions to \$500 per household.
2. Prohibit cash sales.

(12) Transactions Between a Rural Resident and Others

1. Allow sale of fresh or frozen fish only. No processed fish may be sold or bartered under this subsection.
2. Limit to personal or family consumption by the purchaser. Fish may not be resold.
3. Prohibit all cash transactions between rural residents and others.
4. Limit the pounds of fish allowed to be sold.
5. Do not limit cash transactions.
6. Limit cash transactions to \$400 per household.
7. Adopt region specific language.

(13) No Purchases by Businesses

1. No licensed fisheries business (AS43.75.011), seafood processor (AS17.20.065), or seller of food to the public under other state laws may purchase, barter for, or solicit for subsistence taken fish, their parts, or their eggs.

SUMMARY OF ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

The Alaska Department of Fish and Game made the following observations regarding customary trade and will support rules that clarify this customary and traditional activity.

Customary trade

1. is an integral part of Alaska's family-based subsistence tradition.
2. occurs continuously throughout Alaska.
3. usually presents no conservation or enforcement issues.
4. allows families to distribute subsistence resources to people outside their usual sharing and bartering networks for limited cash.
5. provides traditional foods to those who are unable to harvest.
6. makes available traditional foods not available in commercial markets.
7. is not conducted for profit.
8. is not conducted in isolation from other subsistence activities.

The following recommendations and comments were also submitted:

- **Additional Rules Will Be Needed**
 1. Where limits are necessary they should apply to the amount of harvested resource because values fluctuate and allocations and harvest limits are based on amounts.
 2. Limits, where they exist, should apply to households rather than to individuals.
 3. Section 13-C needs to be clarified to prevent large sales to tourists, for example.
 4. Stocks that are fully utilized, fished commercially, or on which customary trade is a significant commercial enterprise may need additional management.
- *Stocks Should Not Be Reallocated to Accommodate Expanding Customary Trade*
 - Potential abuse of customary trade could have negative impacts on small-scale commercial salmon fisheries in rural areas.
 - There is substantial risk that expanding customary trade could result in reallocation of stocks from commercial uses to subsistence uses.
- *Customary Trade Should Not Circumvent Commercial Fishing Management*
 - This should not be a way to commercial fish without complying with commercial fishing regulations.
- *Customary Trade is Not an Exemption from Food Safety Regulation*
 - The Board should make it clear that customary trade rules do not exempt people from Alaska Department of Environmental Conservation regulations and Federal Department of Agriculture rules on sale and processing of foods.

The Alaska Department of Fish and Game strongly supports the approach taken in Alternative 3 but believes it needs additional fine-tuning to deal with specific situations. As part of that process, recommendations by the Regional Advisory Councils need to be considered.

During the extended comment period, the Federal Subsistence Board received written public comments from:

Alaska Dept. of Environmental Conservation
Andy Lundquist
Association of Village Council Presidents
Bruce Short
Dan Foster
David Hodgdon
David Pease
Dennis Watson
Don Lowe
Dwight Kramer
Felicia McAuley
Fred Williams
Frederic Kuhlmann
Gordon Brower, Sr.
James Marchini
James P. Jacobson
John Clifford Breseman
John J. Burns
Lauren Padawer
Leonard P. Miller
Louden Tribal Council
Mike Stredny
Paug-Vik Inc. Ltd.
Petersburg Vessel Owners Association
Primula M. Babcock
Robert Sherwood
Ruth McHenry
Southeast Alaska Fishermen's Alliance
Steve and Karen Kulin
Steven F. Gebert
Thomas Teseniar
Timothy Brady
Tom Carpenter
Tony and Fannie Weyiouanna
United Cook Inlet Drift Association
U.S. Fish and Wildlife, Law Enforcement
U.S. Forest Service, Law Enforcement
Yukon River Drainage Fisheries Assn.

Summary of Comments Prior to May 2002 Federal Subsistence Board Meeting

REGIONAL COUNCIL RECOMMENDATIONS

Region 1 - Southeast Alaska Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, ~~unprocessed or processed using customary and traditional methods~~ is permitted.

(12) Transactions Between a Rural Resident and Others - The exchange for cash between rural residents and individuals other than rural residents in customary trade for of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident ~~to commercial entities other than fisheries businesses or from a rural resident to individuals~~ is permitted. ~~as long as the customary trade does not constitute a significant commercial enterprise.~~ Subsistence harvested fish may not enter commerce at any point.

For Southeast Fishery Management Area - The customary trade of eulachon to others is permitted as long as all sales are to individuals and the fish do not enter commerce at any point.

~~(13) No purchase By Fisheries Businesses - If you are required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter for, subsistence-taken fish, their parts, or their eggs.~~

Region 2 - Southcentral Regional Advisory Council

Recommended adopting Sections 11 and 13.

In section 12,

(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts or their eggs, legally taken under the regulations in this part from a rural resident ~~to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents~~ is permitted, as long as ~~the customary trade does not constitute a significant commercial enterprise.~~ it is used for personal or family consumption of the individual who purchases the fish. The recordkeeping form will be included on the back of the subsistence harvest permit.

Also add the following regional requirements respective to section 12:

§ __.27(i)(10) Cook Inlet Area

(xx) The total cash value per household member of salmon taken in the Cook Inlet Area exchanged in customary trade or barter to others may not exceed \$1,000.00

CUSTOMARY TRADE

annually. At least 50% of all fish taken under subsistence regulations must be kept for the family's personal use.

§ __.27(i)(11) Prince William Sound Area

(xx) The total cash value per household member of salmon taken in the Prince William Sound Area exchanged in customary trade or barter to others may not exceed \$1,000.00 annually. At least 50% of all fish taken under subsistence regulations must be kept for the family's personal use.

Region 3 - Kodiak/Aleutians Regional Advisory Council

(11) Transactions Between Rural Residents - The exchange for cash between rural residents in customary trade of subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted.

(xx) The total cash value per household member of salmon taken in the Kodiak or Aleutians Area exchanged in customary trade or barter between rural residents may not exceed \$500.00 annually.

(12) Transactions Between a Rural Resident and Others - Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise.

(xx) The total cash value per household member of salmon taken in the Kodiak or Aleutians Area exchanged in customary trade or barter to others may not exceed \$500.00 annually. At least 50% of all fish taken under subsistence regulations must be kept for the family's personal use.

Recommended adopting Section 13.

Region 4 - Bristol Bay Regional Advisory Council

In Section 11, add the modified regional language

(xx) The total cash value per household ~~member~~ of salmon taken in the Bristol Bay Area exchanged in customary trade or barter to rural residents may not e exceed ~~\$1,000.00~~ \$500.00 annually.

In Section 12, add the modified regional language

(xxi) The total cash value per household ~~member~~ of salmon taken in the Bristol Bay Area exchanged in customary trade or barter to others may not exceed \$400.00 annually.

Without a tracking system (permits), the Bristol Bay Subsistence Regional Advisory Council does not support their actions on (11) and (12).

The BBSRAC voted unanimously to adopt (13) as written.

Region 5 - Yukon/Kuskokwim Delta Regional Advisory Council

Recommended extend comment period and deferral of any decision until April 2003 pending further village studies.

Region 6 - Western Interior Regional Advisory Council

(11) Transactions Between Rural Residents – The exchange between rural residents in customary trade of subsistence-harvested fish, their parts (except eggs), ~~or their eggs~~, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted. (The egg exception does not apply to whole fish.)

For the Yukon and Kuskokwim Areas Only:

(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts (except eggs), ~~or their eggs~~, legally taken under the regulations in this part from a ~~rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents~~ is permitted, as long as ~~the customary trade does not constitute a significant commercial enterprise~~. it is used for personal or family consumption of the individual who purchases the fish and cannot be resold.

At least 50% of all fish taken under Federal subsistence regulations must be used for personal and family consumption. If in-season subsistence restrictions have been imposed on a salmon species or escapement goal thresholds have not been met on the majority of the Yukon and Kuskokwim River drainages, sale to others shall be eliminated for that species.

If a rural resident engages in customary trade of subsistence harvested fish they shall maintain a subsistence harvest record to track the harvest level as a record keeping system. Anyone selling subsistence harvested salmon must have their harvest record in their possession when engaged in sales with others. If a person sells more than a total of 100 pounds of processed salmon, it would constitute a significant commercial enterprise, which should be looked at more closely.

Adopt Section 13 as written.

Region 7 - Seward Peninsula Regional Advisory Council

Recommended adopting Sections 11 and 13. Recommended adopting Section 12 with the regional limitations (Option 4).

For Section 12 include:

(xx) The total cash value per household member of salmon taken in the Norton Sound-Port Clarence Area exchanged in customary trade or barter to others is not limited.

CUSTOMARY TRADE

Region 8 - Northwest Arctic Regional Advisory Council

Recommended adopting Sections 11 and 13. Recommended adopting Section 12 with the regional limitations (Option 4).

For Section 12 include:

(xx) The total cash value per household member of salmon taken in the Kotzebue Area exchanged in customary trade or barter to others is not limited.

Region 9 - Eastern Interior Regional Advisory Council

(11) Transactions Between Rural Residents – The exchange between rural residents in customary trade of subsistence-harvested fish, their parts except eggs, ~~or their eggs~~, legally taken under the regulations in this part, unprocessed or processed using customary and traditional methods, is permitted. *(The egg exception does not apply to whole fish)*

(12) Transactions Between a Rural Resident and Others – Customary trade for fish, their parts except eggs, ~~or their eggs~~, legally taken under the regulations in this part from a rural resident ~~to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents~~ is permitted, as long as ~~the customary trade does not constitute a significant commercial enterprise~~. it is used for personal or family consumption of the individual who purchases the fish.

No consensus on dollar value...and does not exceed \$200 per person per year in sales. If a higher dollar value is allowed under (12) then a permitting system similar to a catcher-seller permit in the State system should be in place. Virgil thought there might be a possibility that the level of customary trade allowed may exceed the value from some commercial fisheries. This is not the intent of allowing for Customary Trade. It may be better to use a number of fish for the allowed level of customary trade rather than a dollar value. The Council also discussed the idea that harvest for customary trade should not be the primary goal of subsistence harvest. Fish exchanged in customary trade should be an incidental part of the total harvest of a household. There was discussion of thresholds (<50%, <25%) to identify the incidental level.

The Council also discussed this:

When the pre-season forecast indicates that a run will not provide for escapement and full subsistence harvest, even with restrictions on nonsubsistence uses, then customary trade on that run will be prohibited (as with the Yukon River chum runs for 2002). (This can be modified based on inseason run assessment.)

However, some problems were identified with this language. The Council discussed at length the idea that at certain particularly low levels of run strength, customary trade should be prohibited and all subsistence harvest reserved for family consumption. It was recognized that the terminology for this is not easily identified – (stock of concern, yield concern, etc). It was also recognized that assessment of run strength (pre-season, early season, mid-season) posed a technical problem for applying this idea.

A council member wanted to make sure that the pre amble of the Federal regulations ensures that if the level of subsistence harvest increases dramatically then some actions would be taken to then restrict customary trade so it does not expand subsistence harvest into a type of commercial fishery.

The Council also discussed the idea that the prohibition on purchase by fisheries businesses should apply to those outside of Alaska, as well. In para 12, the Council deleted reference to non-fisheries businesses, in order to eliminate all customary trade to businesses. The Council also discussed the idea that the prohibition should equally limit sale to a business, as well as purchase by a business.

(13) No Purchase By Fisheries Businesses – If you are required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011, you may not purchase or receive for commercial purposes or barter or solicit to barter for, subsistence-taken fish, their parts, or their eggs. Any person with an Alaskan State business license who runs commercial dog teams is not allowed to buy and feed subsistence caught fish to dogs. Also applies to non- Alaska businesses.

Definitions: Commercial Dog Team: A business that leases, rents, races, or otherwise provides services with their dogs or dog team for money or remuneration (services other than money), excluding amateur events.

Region 10 - North Slope Regional Advisory Council

Recommended adopting Sections 11 and 13.

Recommended adopting Section 12 as follows:

(12) Transactions Between a Rural Resident and Others - Customary trade for fish, their parts, or their eggs, legally taken under the regulations in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted, ~~as long as the customary trade does not constitute a significant commercial enterprise.~~

Summary of Written Public Comments

Of the 64 written comments received, only three support the published proposed rule and those with qualification. Comments were received from Federal and State agencies, Tribal organizations, sportsmen's associations, commercial fisheries business owners and organizations, and individuals. The comments generally fall into three categories:

- there should be no cash sale of subsistence caught fish;
- there should be no regulations made by Federal or State governments that would limit customary trade; and
- the final rule should be deferred.

These categories are not mutually exclusive. Some commenters who clearly oppose the proposed rule offer modifications that might lessen the effects of the proposed regulations. Others who clearly oppose the proposed rule urge the Board to defer action. Many do not state any position on the proposed rule, but recommend deferral of any action to allow for further research on use patterns, to confer with elders, and to consult with Tribal governments.

The suggested modifications to the Proposed Rule are as follows and may represent more than one commenter.

Paragraph (11): With few exceptions, those who commented on paragraph (11) believe that there should be no restrictions on trade between rural residents. The following modifications were recommended:

- Modify to include the words "...exchange *for cash* between rural residents..."
- No cash transactions should be allowed.
- Modify to require at least 50 percent of subsistence caught fish must be retained for personal and family consumption.

Paragraph (12): Of the proposed regulations, Paragraph (12) elicited the most comment. The comments tended to be regional with a few that would apply statewide. The following comments and modifications were offered:

- Customary trade should be restricted to transactions between rural residents only.
- Customary trade is unknown in Yup'ik culture and it should not be allowed now.
- There should be no limit set for the Seward Peninsula region.
- Some tribal entities stated that their trade patterns did not and do not include cash transactions. Traditional harvest and trade should continue under traditional management without interference from Federal or State governments.
- Modify to read, "The exchange for cash between a rural resident and others in customary trade of subsistence harvested fish, their part, or their eggs, legally taken under the regulations in this part from a rural resident to individuals other than rural residents is permitted."
- Modify to read, "Customary trade for fresh or frozen fish, their parts or their eggs, legally

taken under the regulations in this part from a rural resident to individuals other than rural residents is permitted, as long as the customary trade does not constitute a significant commercial enterprise. Processed fish may not be sold or bartered under this subsection.”

- Modify to read, “Transactions between a Rural Resident and Others – The exchange for cash between rural residents and individuals other than rural residents, or to commercial entities other than fisheries businesses, in trade of subsistence harvested fish, their parts, or their eggs, legally taken under the regulations in this part by a rural resident, is not permitted.”
- If escapement goals will not be met in a given year, customary trade of those fish stocks should be limited or prohibited.
- The monetary limit in northern Alaska should be \$3,000 to \$5,000 because of the higher cost of living.
- The monetary cap should be a range between \$400 and \$1,000 to be determined by region.
- Research should be conducted before setting a dollar limit on rural to urban customary trade.
- Eggs should not be sold at all.
- At least 50 percent of subsistence harvest of fish should be used for personal and family consumption.

Paragraph (13): This section was generally accepted. The following recommendations were offered:

- Modify to allow those who have CFEC fishing permits to participate in subsistence trade and barter.
- Modify to exclude sales to those businesses that have filed the yearly “Intent to Operate” form with the State or those that operate retail sales establishments.
- Modify to read, “No purchases by Businesses – businesses and organizations may not purchase, barter for, or solicit to barter for subsistence-taken fish, their parts, or their eggs.”
- Modify to read, “No business or organization may purchase or barter for or solicit to barter for subsistence taken fish, their parts, or their eggs.”

General Comments: In addition to these comments and recommendations, almost all the written public comments expressed concerns about topics within and surrounding customary trade.

These comments indicate that a significant number of the writers appear to have limited or no understanding of customary trade. Their comments imply that they believe the final rule will create a new practice and that subsistence hunting and fishing should only feed one’s immediate family. These comments recommended the most restrictions or complete prohibition of customary trade.

Comments from those engaged in commercial fisheries and commercial sport fisheries expressed their fears that the proposed regulations will create a new commercial subsistence fishery that

CUSTOMARY TRADE

will substantially impact their businesses. They note that Alaska's fish stocks are already fully allocated and that the opportunity to generate cash from subsistence resources will result in additional harvest and pressure. They are concerned that the subsistence priority will reallocate fish to the detriment of established commercial and sport fisheries. They would either prohibit customary trade or would impose strict limits and reporting procedures.

Other writers recommended that the Federal Subsistence Board initiate a public education process to help develop understanding and dispel current hostilities. The rural and Native comments centered on the tenet that subsistence is a right, not a privilege dictated by any non-Native government. They expressed concern that subsistence, as protected by ANILCA, may be diminished over time by the administrative fiat of bureaucrats. They are worried about the inevitable destructive impacts of the proposed regulations on centuries old trade networks and, subsequently, on subsistence as a whole.

There are those who are concerned about the inclusion of barter in these proposed regulations. They state that to include barter in any wording in this proposed rule sends a message that barter also needs to be controlled.

Many writers expressed concern that the proposed rule has no permitting or record-keeping requirement to make the regulation enforceable. They recommend accountability of harvests and sales to ensure evaluation for impacts to the resource and prevent increased harvests. Others recommend that the current recording of subsistence harvests done by ADF&G is sufficient.

There is also concern that public health safety standards must be assured by requiring subsistence caught fish sold to the public must be processed under the State food handling and processing regulations.

A majority of the letters, including those from State and Tribal agencies as well as from individuals, question the accelerated schedule the Board has set for addressing this matter and express varying degrees of uneasiness. Sufficient time has not been allowed to consider the effects the proposed regulations will have on individual lives, culture, or to develop collaborative management by Federal, State and Tribal government agencies. More time is needed to conduct research to determine use patterns and needs and to consider the far-reaching effects of the proposed regulations. It was noted that Congress took ten years to enact subsistence protection regulations after ANCSA, so taking quality time to address customary trade should be acceptable to the Board. These writers urge the Board to proceed with care and caution and recommend deferring action.

The primary recommendation of the majority of the written public comment is to defer action on this regulation.

Summary of Tribal Consultation Meetings and Tribal Government

USFWS as a lead agency for Federal Subsistence management pursuant to the Department of the Interior-Alaska Policy on government-to-government relations with Alaska Native Tribes conducts tribal consultation on any Federal actions that will have a direct effect on the resources or rights of the tribes. The Office of Subsistence Management has assessed that the cultural and traditional activities of the tribes may be affected by the proposed action (proposed rule on Customary Trade).

Three one-on-one tribal consultations were conducted with federally recognized tribes from February – April 2002. The OSM staff also participated in a number of teleconferences with the subregional offices of the Tanana Chiefs Conferences and provided information to the participants. Regional Native non-profit annual meetings were also attended at the request of their Presidents to provide the information on the proposed rule.

One-on-one Tribal Consultations

Mt. Village Tribal Council - February 19, 2002.

After citing the importance of the subsistence way of life and how it could be impacted by the proposed rule, the participants, in general, agreed with A(11), “rural to rural” and A(13) however, cited that A(12) is very problematic having the greatest potential of getting out of control, if it has a “cash” limit. They also expressed that they did not have enough time to review the proposed rule.

Southeast Alaska Inter-Tribal Fish & Wildlife Commission – April 05, 2002.

After considerable discussion the Commission adopted the following action:

Motion: Tribal entities (members of the Commission) recommend that the rule making on Customary Trade be delayed a year to give the tribes and elders time to review and make comments on the proposed rule.

Hydaburg Community Association Tribal Council – April 22, 2002.

Tribal council members expressed their concerns, that the Federal Subsistence Board has not properly implemented ANILCA-Section 804, where dependence on a subsistence wildlife or fisheries population is a mainstay of livelihood. They believe the tribe’s livelihood and economy should be the basis for Customary Trade, implying that fish harvested should be commercialized to support this livelihood.

Tribal officials stressed that business between tribes and government should be conducted pursuant to the Indian Commerce Clause of the United States Constitution. In follow up

CUSTOMARY TRADE

correspondence, the Hydaburg Community Association Tribal Council requested a more formal “government-to-government meeting citing that the meeting of April 22, 2002 was not a meaningful “government-to-government relationship. They also proposed the following definition for Customary Trade:

Customary Trade: Amount of commerce in the use of wild and renewable resources to maintain a level of livelihood. This standard will be followed in all cases by all persons in the same business in the same territory and by no less than a moderate living standard for customary and traditional users.

Teleconferences

Galena Subregional Office of Tanana Chiefs Conference

All participants expressed that more time is needed to review the proposed rule before final action is taken by the FSB.

Yukon/Tanana Subregion of Tanana Chiefs Conference

Information on the proposed rule was provided with very little feedback or recommendation provided. Some did express that their elders need to review and comment on the proposed rule before the FSB takes final action.

Written Comments

Of the 65 written comments, eight were from tribal governments; Grayling Tribal Council, Hoonah Indian Association, Kaltag Tribal Council, Koyukok Tribal Council, Loudon Tribal Council, Native Village of Ekulna, Sitka Tribe and Tanana Tribe. In addition, five written correspondents were from tribal organizations; Central Council Tlingit & Haida, Copper River Native Association, Association of Council Presidents, Kawerak and Tanana Chiefs Conference.

Summarizing the written comments; the majority recommended deferral. Sitka Tribe supported the Southeast Regional Council recommendation. The Native Village of Ekulna requested to be allowed to continue their traditional customary practice of customary trade under their tribal management plan. The Native Village of Eyak requested a more formal government-to-government consultation, citing that they do not consider a mass mailing adequate for tribal consultation.

Summary of Alaska Department of Fish and Game Comments

The Alaska Department of Fish and Game strongly recommends deferral of the proposed regulation to provide additional time for expanded public involvement, to allow consideration of regional resource use patterns, and to fully evaluate public comments. The department noted that the proposed regulatory language will have implications for future Federal regulations regarding customary trade of wildlife and stated that these implications need to be considered when deliberating action on customary trade of fish.

The ADF&G recommends that regulatory language:

- protect ongoing patterns of customary trade, including regional differences;
- prevent abuse by those taking wrongful advantage of the system; increase enforceability of regulations by specifically defining “significant commercial enterprise” or providing other regulatory modification;
- preclude increased harvest by expanding a current pattern of use; and
- not authorize a new pattern of use.

The department recommends that the following be used as evaluation guidelines for the proposed regulatory language:

- Address customary trade on a case-by-case basis and on a region or stock specific basis.
- Use a quantity of harvest as a cap rather than a monetary amount.
- Prohibit involvement of licensed fisheries businesses.
- Prohibit participation in customary trade by businesses and organizations engaging in commerce either as recipients or for resale.
- Identify harvest limits per household rather than per person.
- Coordinate development of Federal and state regulations.
- Monitor customary trade activities but not necessarily require permits.
- Define “significant commercial enterprise.”

The department recommends deferring action on the proposed rule and recommends forming a joint protocol for customary trade including Federal, public, and state partners within the scope of the state and Federal interagency Memorandum of Agreement.

CUSTOMARY TRADE

The Federal Subsistence Board received written public comments on the Proposed Rule and Customary Trade from:

AK DEC/Environmental Health
Alaska Board of Fisheries
Alaska Outdoor Council
Alaska Waterfowl Assn
Albert & Melinda Hofstad
Alaska Native Brotherhood
Anvik Tribal Council
Assn Village Council Presidents
Bill Fliris
Carl Peterson
Central Council Tlinget/Haida
Charlie Campbell
Cooper Landing F&G AC
Copper River Native Assn.
Cordova District Fishermen U
CR/PWS Fish & Game AC
David Street
Debra Deacon
DOI/FWS/Law Enforcement
Donald P. Kompoff, Sr.
Federal Wildlife Officers Assn
Gary Corle
Grayling IRA Council
Hoonah Indian Assn
Hydaburg Cooperative Assn
Jeff Alling
Jeff Berger
John & Marie Murray
John Lamont
Kaltag Tribal Council
Kawerak, Inc.
Koyukuk Tribal Council
Koyukuk/Nowitna NWR
Koyukuk/Nowitna/Innoko NWR
L and T Standish
Leon Osowski
Louden Village Council
Miki Collins
Native Village of Eklutna
Native Village of Eyak
Nicholas C. Tucker, Sr.
NPFMC

Paxson F&G AC
Senators Halford & Porter
Sidney Huntington
Sigurd D. Ratter
Sitka Tribe of Alaska
Southeast Alaska Fishermen's
Southeast Alaska Seiners
Stephen J. Aldrich, Sr.
Steve Vanek
Tanana Chiefs Conference
Tanana Fish & Game Assn.
Tanana Tribal Council (Chair)
Tanana Tribal Council (Ex Dir)
Tanana/Rampart/Manley AC
The Boat Company
USFS
Victor Burgess
Virgil Umphenour
Wanda Culp
Wilfred R. Ashby
Yukon River Drainage Fisheries